

WORLDCOM

DOCKET FILE COPY ORIGINAL

ORIGINAL

Kimberly A. Scardino
Associate Counsel
Federal Advocacy

1133 19th Street, NW
Washington, DC 20036
202 736 6478
Fax 202 736 6492

January 22, 2002

RECEIVED

JAN 23 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Hand Delivery


Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CC Docket No. 01-318 Performance Measurements and Standards for
Unbundled Network Elements and Interconnection

Dear Ms. Salas:

Pursuant to the Commission's Notice of Proposed Rulemaking, released November 19, 2001, in docket number 01-318, attached for filing is an original and four copies of WorldCom's Comments. Please do not hesitate to contact me, if you have questions.

Sincerely,


Kimberly Scardino

Enclosures

cc: Janice Myles
Dorothy Attwood
Jeffrey Carlisle
Michelle Carey
Cathy Carpino
Uzoma Onyeije

No. of Copies rec'd 014
List ABOVE

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

RECEIVED

JAN 22 2002

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Performance Measurements and Standards	)	CC Docket No. 01-318
For Unbundled Network Elements and)	
Interconnection)	
)	
Performance Measurements and Reporting	)	CC Docket No. 98-56
Requirements for Operations Support)	
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Association of Local	)	CC Docket Nos. 98-147, 96-
Telecommunications Services for	)	98, 98-141
Declaratory Ruling)	

COMMENTS OF WORLDCOM, INC.

Kimberly Scardino
Lisa Youngers
Karen Reidy
Lori Wright
WORLDCOM INC.
1133 19th Street, NW
Washington, D.C. 20036
(202) 736-6478 (voice)
(202) 736-6492 (fax)
Kimberly.Scardino@wcom.com

TABLE OF CONTENTS

I.	SUMMARY OF COMMENTS	1
II.	THE ESTABLISHMENT OF FEDERAL METRICS: LEGAL AUTHORITY & SCOPE ..3	
	A. Any Federal Measurements and Standards Should Serve As a Baseline That the State are Free to Go Beyond	4
	B. The State Measurements Are Largely Uniform Within Each BOC Region and Were Created based on Industry Input	8
	C. WorldCom's Proposed Measurements and Standards Are Based on the State Metrics, Include all OSS Functions, and Reflect Lessons Learned in the Marketplace	10
	D. Any Federal Measurements Plan Must Include Performance Standards/Benchmarks...17	
	E. The Utility of Federal Measures and Standards for Evaluating Enforcement Actions and 271 Applications Depends on Whether the Measures Appropriately Capture the ILECs Performance in All Areas	19
	F. An Appropriate Enforcement Plan Should Be Tied to the Measures	20
III.	THE COMMISSION SHOULD ADOPT WORLDCOM'S PROPOSED MEASUREMENTS AND STANDARDS	24
	A. Federal Measurements Must Be Appropriately Disaggregated	27
	B. Description of WorldCom's Proposed Measurements and Standards.....32	
	1. Percent System Availability.....	32
	2. a. Preorder Query response Timeliness; Maintenance Query Response Timeliness; (b) Percent Ordering/Preordering System Error/Timeouts	34
	3. (a) Percent Change Management Notices/Documentation Sent On-Time; (b) Average Delay Days	36
	4. (a) Percent Software Error Correction in X Days; (b) Average Delay Hours/Days	37
	5. CLEC Center Responses in X days	39
	6. Percent Order Accuracy	40
	7. Percent Flow Through.....	41
	8. Percent On-Time LSRC/FOC.....	42
	9. Percent On-Time Reject Notices	44
	10. Percent Jeopardy Notices.....	44
	11. Percent On-Time Completion Notices.....	45
	12. Percent Timely Loss Notifications.....	46
	13. Average Completion Interval (with dispersion around average).....	47

14.	Percent Orders Completed on Time.....	48
15.	Percent Timely Coordinated Conversions	48
16.	(a) Average ILEC Caused Provisioning Outage Duration; (b) Percent ILEC Caused Provisioning Outages	49
17.	Percentage of Orders Held 5, 15, 30 Days.....	50
18.	Troubles Within 30 Days of Install/Order Activity	51
19.	Mean Time to Restore.....	52
20.	Trouble Report Rate.....	52
21.	Percent Repeat Troubles	54
22.	Percent of Customer Troubles Resolved Within Estimated Time	54
23.	Percent Trunk Blockage.....	55
24.	Percent Timely Collocation Responses	56
25.	(a) Percent Collocation/Augment Appointments Met; (b) Average Collocation/Augment Interval	56
26.	NXXs/LRNs Loaded Before LERG Effective Date	57
27.	Timeliness of Daily Usage Feed	58
28.	Timeliness of Carrier Invoice	59
29.	(a) Billing Error Correction Requests Acknowledge in X Hours; (b) Billing Errors Corrected in X Days.....	59
IV.	CONCLUSION.....	60

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

RECEIVED

JAN 22 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Performance Measurements and Standards	)	CC Docket No. 01-318
For Unbundled Network Elements and)	
Interconnection)	
)	
Performance Measurements and Reporting	)	CC Docket No. 98-56
Requirements for Operations Support)	
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Association of Local	)	CC Docket Nos. 98-147, 96-
Telecommunications Services for	)	98, 98-141
Declaratory Ruling)	

COMMENTS OF WORLDCOM, INC.

I. SUMMARY OF COMMENTS

The UNE Metrics Notice of Proposed Rulemaking (NRPM) seeks comment on “whether the Commission should adopt a select group of measurements and standards for evaluating incumbent local exchange carrier (incumbent LEC) performance in the provision of facilities that are used by their carrier-customers to compete for end-user customers.”¹ The Commission explains that the current “regulatory patchwork” of state performance measurements and the absence of federal standards has failed “to provide the industry with consistent, ‘bright line’ guidance as to whether an incumbent has

¹ *In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection*, Notice of Proposed Rulemaking, CC Docket No. 01-318, (rel. November 19, 2001) (NPRM or Notice) at ¶ 1.

provided just, reasonable and nondiscriminatory service” to a competitor.² While WorldCom believes that federal measurements and standards, if enforced, would go a long way toward ensuring that ILECs adhere to their obligations under the 1996 Act, we are troubled by the NPRM’s suggestion that the federal benchmarks could help streamline, modify or eliminate the state standards. WorldCom only supports the adoption of federal measurements and standards if they serve as a baseline that the states can supplement. Moreover, any federal measurements and standards must include all functions of the BOCs’ operations support systems and processes and should be appropriately disaggregated to include UNEs, Interconnection and Resale. Anything less would not enable the Commission to achieve the goal set forth in the NPRM: to determine “whether an incumbent LEC has provided just, reasonable and nondiscriminatory service *in any given situation.*”³

When the FCC declined to adopt federal measurements and standards, the states, with the assistance of ILECs, CLECs and interested parties, stepped up and developed measurements and standards that cover all modes of entry—UNEs, Resale and Interconnection—and all functions of Operations Support Systems and Processes—preorder, order, provisioning, maintenance and repair, billing and change management. Nearly every state in the country has either established performance measurements and standards, or is considering their adoption. Indeed, in many instances, the BOCs have voluntarily agreed to state performance measurements and standards.

² NPRM at ¶ 3. For the past several years, the FCC has declined to adopt a formal set of federal benchmarks to ensure ILEC compliance with the Telecommunications Act of 1996. Rather, the FCC, in evaluating section 271 applications submitted by the BOCs and in establishing rules for the BOCs to adhere to as conditions of their mergers, has relied on the performance measurements and standards established by the states.

³ NPRM at ¶ 3 (emphasis added).

WorldCom supports the establishment of federal uniform measurements and standards; however we recognize the existence of the state measures and believe there is a way to establish federal measures that coexist with both existing and future state measurements and standards. WorldCom is proposing a set of measurements and standards for adoption by the FCC that is a compilation of the best state metrics and reflects our commercial experience in the market. The Commission should adopt WorldCom's proposed measurements and standards, which are supported by several competitive carriers, and establish them as a minimum measure or baseline that the states are free to go beyond.

II. THE ESTABLISHMENT OF FEDERAL METRICS: LEGAL AUTHORITY & SCOPE

The NPRM seeks comment on whether the FCC should adopt a select set of federal performance measurements and standards. As a national provider of voice and data services, WorldCom supports uniform measurements and standards and believes they would go a long way toward ensuring that the ILECs comply with their obligations under the Telecommunications Act of 1996. As a practical matter, WorldCom recognizes the existence of the state performance measurements and standards and offers a means by which existing and future state measures can coexist with federal measures and standards.

Given the fact that the states have been active in developing performance rules for unbundled network elements ("UNEs"), resale and interconnection, the need for federal measures is not as pressing as the need for measures and standards for services that the states have not addressed, such as special access performance. Nonetheless, WorldCom supports the adoption of uniform federal measures and offers a comprehensive set of

measures that the Commission should adopt as a minimum baseline that the states can supplement based on their unique market conditions.

A. Any Federal Measurements and Standards Should Serve As a Baseline That the States are Free to Go Beyond

If the Commission acts on its authority and adopts federal performance measurements and standards, it should do so using the accomplishments of state commissions as a model. Any federal measurements and standards should serve as a baseline that the states are free to exceed. For example, state commissions can build on the federal requirements to provide additional measures or stricter standards and remedies, allowing them to meet the particular conditions of their individual states. States could elect to adopt the FCC's baseline measurements pending the deliberations of a more robust state plan, or use the FCC's measurements and standards to enforce section 251 and 271 requirements.

In a similar situation, the Commission established federal requirements as a floor not a ceiling so as not to usurp state or local jurisdiction and authority. Rather than developing a new set of measures in the Bell Atlantic/GTE merger proceeding, the Commission relied upon the performance measures and corresponding business rules developed in the New York collaborative process. In doing so, the Commission emphasized that Commission's use of the measures would not "affect, supplant, or supersede any existing or future state performance plan."⁴

⁴ *In re Application of GTE Corporation and Bell Atlantic for Consent to Transfer Control of Domestic and International Sections of 214 and 310 Authorizations and Application to Transfer Control of Submarine Cable Landing License*, Memorandum Opinion and Order, CC Docket No. 98-184, para. 281 (rel. June 18, 2000)(imposing merger conditions as a "floor and not a ceiling.") *Id.*, para. 252. "It is not the intent of these Conditions to restrict, supercede, or otherwise alter state or local jurisdiction under the Communications Act of 1934, as amended, or over the matters addressed in these Conditions, or to limit state authority to adopt rules, regulations, performance monitoring programs, or other policies that are not

Nonetheless, the Commission in its Notice asks whether it should adopt national performance measurements and standards that would supplant corresponding state measures and standards where the state requirements differ.⁵ The Commission should make every effort to coordinate with the states so that, where both agencies are monitoring the same function, the definition and business rules for measuring and reporting that particular function are the same or similar. The Commission, however, should not, as Verizon has suggested, attempt to “limit the number of performance measures that incumbent carriers report for federal *and state purposes* . . . [to] a core set of 10 to 15 wholesale performance measures and eliminate the rest.”⁶ In addition to the insufficiency of such a scheme, the Commission has found the state commissions’ role under the Act not merely to be one of implementing and enforcing Commission rules. Rather, the states are to determine for themselves what is needed for local competition in their states, and ensure that those needs are met.⁷ In fact the Commission has stated that “[s]ections 251 and 252 of the Communications Act create a partnership between the

inconsistent with these Conditions.” *Id.*, Att. D, p. 1; *See also, In re Application of Ameritech Corp., and SBC Communications Inc. For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, Memorandum Opinion and Order, CC Docket No. 98-141, ¶¶ 356 and 358 (rel. October 8, 1999).

⁵ NPRM, para. 18.

⁶ *See* NPRM, para. 6, n. 10, *citing* Verizon’s Reply to Comments Updating Previously Filed Petitions for Reconsideration, CC Docket No. 96-98, at 4-5 (filed Sept. 10, 2001)(emphasis added). Verizon seems to be asking the Commission to claim exclusive jurisdiction over the establishment of performance measures and standards for UNEs, and consequently find any additional state reporting measures or stricter standards in conflict with the Commission implementing rules.

⁷ The Commission has stated that “[s]tate commissions are statutorily authorized to decide for themselves what sections 251 and 252 require, as long as their decisions do not (i) conflict with other requirements of section 251, (ii) substantially prevent implementation of the requirements of section 251 and the purposes of sections 251-261, (iii) violate section 253, or (iv) at least in the context of arbitrating and approving interconnection agreements, contradict the Commission’s implementing rules Therefore, one of the very “requirements” of the Communications Act is that state commissions have the authority to decide for themselves (within the previously described limits) exactly what sections 251 and 252 require.” *In the Matter of American Communications Services, Inc. MCI Telecommunications Corp. Petitions for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to*

Commission and state commissions in *defining* the precise parameters of those sections' requirements" and that "... the Communications Act identifies [the Commission's] rules as a subset, not a complete set, of the requirements of section 251."⁸

Moreover, in addition to its acknowledgements that the current state performance mechanisms have assisted in bringing BOCs into compliance with their section 271 market opening provisions, which include the sections 251 and 252 obligations, the Commission has strongly encouraged states to develop such plans.⁹ The Commission has repeatedly referred to them as "critical complements" to the Commission's authority in maintaining BOC compliance post 271 entry.¹⁰ Moreover, the Commission has not only applauded the states' development of performance plans, but the inclusion of "key metrics" which are not proposed in the Notice, such as metrics addressing change management.¹¹

The state commissions have expended enormous amounts of time and resources to accomplish the task of developing performance measures and standards. The Texas

Sections 251, 252, and 253 of the Communications Act of 1934, as amended, Memorandum Opinion and Order, CC Docket No. 97-100, para. 35 (Dec. 1999)(*Arkansas Preemption Order*).

⁸ *Id.* (emphasis added).

⁹ *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri*, Memorandum and Order, CC Docket No. 01-194, para. 127 (rel. Nov. 16, 2001)(MO/AR Joint 271 Order)("SWBT's performance remedy plans for Arkansas and Missouri provide additional assurance that the local market will remain open after SWBT receives section 271 authorization. . . . Accordingly, the Commission has strongly encouraged state commissions to conduct performance monitoring and post-entry enforcement."); *See also, In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, para. 22 and 363 (rel. Oct. 13, 1998)(LA II 271 Order). ("We applaud [the adoption of service quality performance measurements, standards, and evaluation criteria] by state commissions to measure and evaluate performance data in order to ensure that BOCs are in fact complying with statutory requirements.") *See also, In the Matter of Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide in-Region, InterLATA Services in the State of New York*, Memorandum Opinion and Order, para. 429, n. 1316 (rel. Dec. 22, 1999)(NY 271 Order).

¹⁰ *See* NY 271 Order, para. 429 n.1316. *See also* MO/AR Joint 271 Order, para. 127 n. 404.

Commission, “through a painstakingly detailed and open process” that lasted two years, approved a set of 131 performance measures and an accompanying remedy plan for use in evaluating SBC’s wholesale performance and to prevent “backsliding” in Texas.¹² The New York Commission spent two years in a collaborative process and trial period (which involved Verizon, CLECs, New York Commission Staff and Administrative Law Judge Jaclyn Brilling) before finalizing measurements that it concluded would “promote competition in the state’s telecommunication’s market, [would] benefit all consumers, and [was] necessary for the preservation of the general welfare.”¹³ The Commission should not attempt to eradicate the states’ accomplishments. Furthermore, the BOCs relied on state performance monitoring and enforcement mechanisms in their 271 applications and the Commission specifically found these plans to be a factor in the approval of those applications.¹⁴

The ILECs are not being unduly burdened by multiple state reporting requirements. States are coordinating and using plans of others states in their region as the foundation for their plans. For example, as the Commission noted in its Missouri/Arkansas decision, the current Texas plan forms the basis for the Arkansas, Missouri, Kansas and Oklahoma performance plans.¹⁵ Each plan is modified in certain aspects to address the particular situations and conditions for that state, which the

¹¹ NY 271 Order, para. 439 n. 1341. The Commission found that the New York Commission reasonably selected “key competition-affecting metrics” for inclusion in the enforcement plan. *Id.*, ¶ 439.

¹² See Evaluation of the Public Utility Commission of Texas, *In the Matter of Application of SBC Communications Inc., and Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-4, p. 104 (filed Jan. 31, 2000).

¹³ See Order Adopting Inter-Carrier Service Quality Guidelines, Before the State of New York Public Service Commission, Case 97-C-0139, at 4-5 (Feb. 16, 1999).

¹⁴ See NY 271 Order, paras. 429 and 433, n. 1325.

¹⁵ AR/MO 271 Order, para. 128.

Commission has found to be reasonable.¹⁶ In fact, the Commission applauded the New York Commission for providing a forum for ongoing modifications and improvements of the performance plan “ . . . because it ensures that the Plan can evolve to reflect changes in the telecommunications industry *and in the New York market*.”¹⁷

It is laudable for the Commission to strive for rationalization and uniformity. As demonstrated by the voluntary efforts by states in a particular BOC region to mirror other effective state plans, a sufficient and comprehensive national performance plan that is based on the state measures is the best for the Commission to achieve these goals.

B. The State Measurements Are Largely Uniform Within Each BOC Region and Were Created Based on Industry Input

The NPRM appropriately notes that the states have played an active role in encouraging local competition.¹⁸ All pro-competitive states have addressed the development of performance measurements and standards. While not all states have tackled the issue of crafting measurements and standards in the same fashion, most have addressed the issue, either in dockets created to assess the BOC's compliance with section 271 of the Act or in separate local competition proceedings. WorldCom has participated in nearly every state metrics proceeding and has played a key role in defining the state measurements. No group of carriers have played a bigger role in developing state metrics than the four BOCs—Verizon, BellSouth, SBC and Qwest. All four carriers have proposed or agreed to measurements for adoption by the states in their region.¹⁹

¹⁶ See *Id.*, para. 129.

¹⁷ NY 271 Order, para. 438 (emphasis added).

¹⁸ NPRM at ¶ 4.

¹⁹ In many instances, the BOCs have *voluntarily* agreed to state performance measurements and standards. Of course, such agreement was made in furtherance of the BOCs' goal of long distance entry, but nonetheless, it is important to point out that the state metrics were adopted and continue to be adopted with input from the incumbents. Outside of the 271 process, the BOCs have not always been willing to come to the table to negotiate performance measures on their own volition. See *MCI Telecommunications Corp.*

The performance measurements adopted in the four BOC regions cover nearly all of the same elements, facilities and services and touch on all of the same OSS functions. Any variations between the performance measurements of Verizon, BellSouth, SBC and Qwest are attributable to differences in the business rule definitions of the metrics. While the measurements are not uniform across country, the metrics within each BOC region are fairly uniform. Any differences that exist within a particular BOC region are due to timing of six-month reviews in adding or deleting measurements and modifying business rules and minimal ILEC product, system and procedural differences between the states.

In the Verizon region, state processes are underway to make the New York measurements and standards uniform within the Verizon-East region. The New York measures and standards will become the measurements and standards for Massachusetts, Rhode Island, Pennsylvania, Maryland, the District of Columbia and Virginia, with allowances for some state specific differences. Likewise, the measurements in the BellSouth region were modeled after the Georgia metrics, which have been adopted almost exactly in Kentucky, Mississippi, and South Carolina and expanded upon in Florida.²⁰

Similarly, all of the Qwest state measurements were based on those developed in the Regional Oversight Committee and the Arizona 271 proceeding. Finally, the original companies that make up the SBC territory—SWBT, Ameritech²¹ and Pacific Bell—have generally the same measurements in their regions, with the SWBT and AIT's the most

and MCImetro Access Transmission Services, Inc. vs. Bell Atlantic Corp. et. al., File No. E-98-32 (rel. December 3, 2001).

²⁰ Louisiana's metrics were adopted prior to Georgia's but will likely be made to comply with the Georgia measures.

²¹ The SBC-Ameritech states also conduct a joint six-month review of metrics. Most of the business rules in the Ameritech states are the same, except for about 15 metrics that are specific to an individual state's processes, such as special construction.

similar because they were based on the original Texas measurements. In addition, some states, such as New York, Texas and California have already done comprehensive reviews of their existing measurements to determine whether they are still necessary, and indeed some measurements were eliminated, while others were added. Thus, when the Commission considers the totality of the measurements in the states, it should review the metrics on a regional basis

WorldCom has created a matrix, attached hereto as Appendix A, that highlights the status of the performance measurements in each BOC region.

C. WorldCom's Proposed Measurements and Standards Are Based on the State Metrics, Include all OSS Functions, and Reflect Lessons Learned in the Marketplace

WorldCom's proposed metrics, included in Appendix B and highlighted in more detail in Section III, are a subset of the performance measurements adopted in the states and represent what we believe to be the "best of the best" state performance measurements. Unlike the metrics included in the NPRM, WorldCom's proposed measurements cover all modes of entry and include all functions of OSS. The twelve measurements proposed in the Notice do not cover key OSS functions that the Commission has highlighted as critically important to ensuring that CLECs can enter the market and sustain entry. If the Commission is inclined to adopt only a few metrics that cover only certain OSS functions, WorldCom does not support the adoption of federal measures as even a model for state measures.

It is crucial that the federal measures, like the state metrics, cover not only preordering, ordering, provisioning, and maintenance and repair--the four OSS functions included in the Notice--but also billing and change management. Federal measures that

exclude key OSS functions will serve no purpose. If the measures will be used to evaluate ILEC performance in the provision of facilities used by competitors, it is important that *all modes of entry* be included and that *all performance* be evaluated. In addition, if only certain OSS functions are selected, it sends a signal to the ILECs that some support functions are more important than others, which if abused by the ILECs, can harm a competitor's ability to serve its customers. For example, a CLEC's OSS operations could be severely impacted, or in some instances halted, by an ILEC's poor performance on change management.

The NPRM explains that the Commission is trying to move away from regulating on a case-by-case basis and is interested in establishing bright line rules by which all ILECs adhere.²² If the Commission were to select measurements that exclude certain key OSS functions and a CLEC subsequently experiences a problem in a particular area that is not covered by the measures, the Commission would have no choice but to look elsewhere for a measurement or standard by which to evaluate the ILEC's performance.

The Commission has made clear that OSS includes "systems, information, and personnel" and that competing carriers must have access to OSS that is equivalent to the BOC's.²³ In addition, the Commission has explained that a BOC's OSS must sufficiently support each competitive entry strategy—interconnection, UNEs and resale—and must not favor one strategy over another.²⁴

In its proposed list of performance measurements and standards, the Commission has entirely omitted performance measurements that are key to local competition. For example, the NPRM fails to include any measures on change management, billing, and

²² NPRM at ¶ 3.

²³ LA. II Order para 80, 83.

flow-through. The collective record established in section 271 proceedings clearly demonstrates that these functionalities and processes are critical to a carrier's ability to compete in the local market. Indeed, even the BOCs themselves recognize the importance to local competition of these three functions and processes.²⁵

The section 271 record also demonstrates that performance metrics in general are important because they validate the individual experience of competitive carriers seeking to break into the local market. It is therefore critical that the Commission establish performance metrics that measure the extent to which the BOCs are adequately providing change management, billing, and flow-through. Not only is this important in the section 271 application process, but it is also important to enforce the section 251 market opening requirements and to prevent backsliding once section 271 authorization is granted.

Change Management. The Commission has repeatedly and correctly emphasized the importance to competitors of change management. As telecommunications systems evolve, the interfaces and processes by which CLECs exchange information with the BOCs change over time. Change management consists of the procedures and methods that a BOC uses to communicate with CLECs about changes in the BOC's OSS system or the performance of the system.²⁶ Change management is the vital process by which

²⁴ SC Order para 141, PA Order, App. C, para 27.

²⁵ The most recent example of a BOCs' acknowledgement of the importance of change management, billing, and flow-through is shown in Verizon's section 271 application for New Jersey. *See In the Matter of Application of Verizon New Jersey Inc. et al. for Authorization to Provide In-Region, InterLATA Services in New Jersey*, CC Docket No. 01-347 (filed Dec. 20, 2001) at 70-71 (emphasizing that VZ met 100% of change management on-time standards); at 67 (noting that VZ has "consistently exceeded" a 98% on-time standard for billing); and 63-64 (discussing level of flow-through rates).

²⁶ Memorandum Opinion and Order, *In re Application of Verizon Pennsylvania Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138 (rel. Sept. 19, 2001) (PA Order) at App C, para. 41 (describing change management).

CLECs and BOCs determine which system changes are needed. It also includes the managed implementation of changes.

In NY 271 Order, the Commission explained that as part of a BOC's demonstration that it provides competitors a meaningful opportunity to compete, "the Commission will give *substantial consideration* to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time."²⁷ The Commission explained that, "[w]ithout a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of changes."²⁸

The significant difficulties in terms of added costs and delays that a flawed change management process imposes on competitors is clearly demonstrated in WorldCom's comments on BellSouth's recently withdrawn section 271 application for Georgia and Louisiana.²⁹ In part because of change management problems, WorldCom devotes four times more Information Technology ("IT") resources to BellSouth in Georgia than we devote in any other state in which we compete.³⁰ Because the costs to competitors of not having adequate change management processes are so significant, any

²⁷ Memorandum Opinion and Order, *In re Section 271 Application of Bell Atlantic New York to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, (Dec. 22, 1999) (NY Order), at para. 102 (emphasis added). See also Memorandum Opinion and Order, *In re Section 271 Application of SBC Texas to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65 (rel. June 30, 2000) (TX Order) at para. 106.

²⁸ NY Order at para. 204.

²⁹ WorldCom Comments, *In the Matter of Application by BellSouth for Authorization to Provide In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 01-277 (filed Oct. 22, 2001) at 34-41.

³⁰ See Ex Parte Letter to Magalie Roman Salas, Secretary, FCC, from Keith L. Seat, Senior Counsel, WorldCom, CC Docket No. 01-277 (filed Dec. 14, 2001) at 1.

failure on the part of the Commission to set forth performance measurements in this area would be patently deficient.

Billing. The Commission has stated on numerous occasions that access to billing information is “vital” to competitive carriers’ provision of accurate and timely bills to customers.³¹ The Commission has found that a BOC must provide CLECs with two essential billing functions: (1) complete, accurate and timely reports on the service usage of customers of competing carriers; and (2) complete, accurate, and timely wholesale bills.³² Service usage reports are absolutely essential because they are the means by which competitors bill their customers for the types and amount of services used.³³ Without the ability to bill customers, a carrier obviously has no opportunity to compete. The Commission therefore should establish performance metrics for the BOC’s provisioning of complete, accurate, and timely service usage reports. Specifically, as part of the section 271 process, the Commission has required that BOCs provide CLECs with complete and accurate service usage reports in the same manner the BOC provides the information to itself.³⁴ The Commission may want to consider this requirement in developing metrics for service usage reports, as discussed more fully in section III B.

Accurate and timely wholesale bills are critical and, accordingly, warrant inclusion in any federal performance plan. The Commission has clearly emphasized the

³¹ TX Order at para. 210; NY Order at para. 226; PA Order at App C, para. 39; Memorandum Opinion and Order, *In re Joint Application by SBC Communications Inc. et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217 (rel. Jan. 22, 2001) (KS/OK Order) at para. 163; Memorandum Opinion and Order, *In re Application of Verizon New England, Inc. et al., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9 (rel. April 16, 2001) (MA Order) at 99.

³² PA Order at para. 13.

³³ PA Order at para. 13.

³⁴ TX Order at para. 210; NY Order at para. 226.

importance of proper wholesale bills.³⁵ Most recently, the Commission dismissed Verizon's assertion in its Pennsylvania 271 application that wholesale bills are relatively unimportant to CLECs, finding instead that:

[I]nnaccurate or untimely wholesale bills can impede a competitive LEC's ability to compete in many ways. First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC. Accurate and timely wholesale bills in both and retail and BOS BDT formats thus represent a crucial component of OSS.³⁶

The Commission thus concluded that the BOC must demonstrate that it can produce a readable, auditable, accurate and timely wholesale bill in order to satisfy its nondiscrimination requirements under checklist item two.³⁷ It is hard to believe that the Commission would omit a wholesale billing metric from its list of proposed performance measures given its previous findings. Such a metric is critical to local competition and should be included in the performance metrics ultimately established by the Commission.

Flow-through. One of the most fundamental OSS requirements is that a CLEC's orders "flow through," that is, be "transmitted electronically through the gateway and accepted into [the BOC's] back office ordering systems without manual intervention."³⁸ The Commission has found "a direct correlation between the evidence of order flow-

³⁵ PA Order at para. 13.

³⁶ PA Order at para. 23.

³⁷ PA Order at para. 22.

through and the BOC's ability to provide competing carriers with nondiscriminatory access to the BOC's OSS functions."³⁹ This is so because flow-through rates directly affect the speed and efficiency with which CLEC orders and status notices are processed.⁴⁰ If an order does not flow through electronically, competitors are subject to the BOCs' manual processing, which is less efficient, less reliable and error prone by its very nature, while the BOCs almost always enjoy consistent electronic flow-through for their retail orders.

The Commission has found that equivalent access for CLECs is impeded by excessive BOC reliance on manual processing, especially for routine transactions.⁴¹ Although the Commission has determined that flow-through rates alone are not a conclusive measure of nondiscriminatory access to OSS, the Commission has found that they are an important indication of the adequacy of a BOC's OSS.⁴² Indeed, WorldCom has experienced terrible flow-through problems in Georgia and Florida. As WorldCom discussed in the Georgia and Florida state section 271 proceeding, BellSouth's high level of manual processing caused too many delays and errors and was therefore grounds for dismissal. For these reasons, it is imperative that the Commission set forth a performance measurement for flow-through.

Change Management, Billing and Flow Through are just three examples of performance that will not be captured under the twelve measurements included in the

³⁸ Memorandum Opinion and Order, *In re Second Section 271 Application of BellSouth Corporation et al. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121 (rel. Oct. 13, 1998) (LA II Order) at para. 107.

³⁹ *Id.*

⁴⁰ Memorandum Opinion and Order, *In re Section 271 Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137 (rel. Aug. 19, 1997) (MI Order) at para. 196.

⁴¹ LA II Order at para. 110.

⁴² MA Order at para. 77.

NPRM. WorldCom's proposed measures, on the other hand, do include all key measurements included in the state measures and emphasized by the Commission in the past. Thus, WorldCom's measures serve as the basis for any federal measures that are adopted.

D. Any Federal Measurements Plan Must Include Performance Standards/Benchmarks

To serve their customers and offer quality products, CLECs require a consistent level of service from the ILECs. The standards tied to federal measures should be fixed benchmarks, rather than parity comparisons to the ILECs' variable service levels. Consistent with this requirement, the benchmark standards do not require statistical tests to evaluate ILEC performance. Rather, benchmarks allow for a "stare and compare" evaluation each month. It is significantly simpler to evaluate the performance results against a "bright line" standard rather than a complex statistical test. This is especially true given the number of sub measures that need to be evaluated each month and the variety of statistical tests that might have to be utilized for the various sub measure types (i.e., average, rates and proportions).

Employing fixed benchmark standards, with no statistical testing, makes evaluating performance results a simple task that every CLEC, regulatory agency, and, for that matter, ILEC can perform. On the other hand, if statistical testing is allowed as part of the incentives plan, each CLEC would be required to have a statistician on staff to effectively evaluate its performance results. In addition, the ILECs and the Commission would have to have statisticians on staff or hire consultants to evaluate the complex statistical plans, implement them, and monitor them for accuracy.

The use of benchmarks does not eliminate the need to see retail reporting for analogous services. Retail performance should be monitored to adjust benchmarks, with the rebuttable presumption for the ILEC to prove why the standard should not become higher rather than lower over time. WorldCom is not ignoring the concept of parity, and believes in many cases benchmarks can be determined by looking at what the ILEC has been able to do for itself over time. Waivers may be sought when force majeure disturbances occur rather than averaging those disturbances into the benchmark calculation to lower a going-forward standard. Even where competition or state oversight keep local retail performance high, CLECs find it better to have a benchmark to use in Service Level Agreements with their customers rather than trust a rolling parity determinant that may change from month to month. WorldCom is willing to concede a period of regulatory lag by letting the ILEC provide improved service over the benchmark for a few months before the benchmark is accordingly adjusted to provide parity treatment of the CLEC.

Because nearly all of the benchmark standards proposed by WorldCom are set at less than 100% (e.g., 95% Percent Orders Completed On Time), the standards already include enough tolerance to allow an ILEC to miss the standard a certain amount of the time due to the effects of random variation. To apply statistical testing to fixed benchmarks would have the effect of lowering all of the benchmarks, thus making them merely targets, or “nice to haves.” Instead, a benchmark should be established as the level of performance that provides a CLEC with a meaningful opportunity to compete. Performance results worse than the benchmark level should not be permitted.

WorldCom has proposed a set of performance standards, which are set forth in Attachment A to Appendix B. WorldCom's proposed standards are based on what the ILECs currently offer or are capable of achieving. Fixed standards allow carriers like WorldCom to better plan their operations. In addition, standards provide the industry with bright line competitive rules that are easy to monitor and enforce. For these reasons, the Commission should adopt the benchmarks set forth in Attachment A to WorldCom's proposed measurements.

E. The Utility of Federal Measures and Standards for Evaluating Enforcement Actions and 271 Applications Depends on Whether the Measures Appropriately Capture the ILECs Performance in all Areas

The NPRM seeks comment on the extent to which compliance with federal measurements and standards "should be taken into account in determining whether enforcement action is appropriate for potential violations of our local competition rules, section 251, or section 271."⁴³ If the Commission adopts measurements and standards that cover all UNEs, facilities and services, and all OSS functions, and the business rules for those measures are narrowly tailored to capture actual ILEC performance, WorldCom supports their use in enforcement actions for potential violations, including problems requiring suspension or revocation of section 271 approval. Moreover, if sufficiently comprehensive, such federal measures and standards may also be helpful in conducting the initial evaluations of section 271 applications, and not merely enforcement actions for post-entry backsliding.

However, it is critical that the federal standards be viewed as one source of evidence in section 271 evaluations. The applicable state standards are another importance source of evidence for both enforcement actions and evaluations of section

271 applications. Failure to satisfy either federal or state standards may be an appropriate basis for enforcement actions or denial of section 271 applications. Of course, metrics cannot ever be expected to cover every area of potential problem, so the Commission must also be prepared to take action whenever competitive problems arise, regardless of whether existing federal (or state) standards have been violated. This was precisely the circumstance in 1999 when Verizon experienced serious competitive problems with missing notifiers in New York and there were no measures in place to quantify the extent of the problem.⁴⁴

F. An Appropriate Enforcement Plan Should Be Tied to the Measures

As the Commission correctly recognizes, any enforcement plan and associated remedies must be substantial enough to serve as an effective deterrent and more than just a simple “cost of doing business.”⁴⁵ Without any regulatory stimulus, the ILEC has no incentive to allow the entry of competitors into its market. In fact, it has every incentive to affirmatively frustrate competitive entry and avoid the dilution of its monopoly status. To counter this, the FCC must ensure that remedies for noncompetitive behavior, such as the failure to meet performance standards, are sufficiently large and that the probability of detection is sufficiently great, through diligent enforcement efforts, so that the failure

⁴³ NPRM at ¶ 21.

⁴⁴ Measures were later added to capture the problem as discussed in Section F.

⁴⁵ NPRM ¶ 22. Indeed, Chairman Powell has observed that too many telecommunications providers simply consider \$75,000 fines “the cost of doing business” and that CLECs need assurance that they will be protected from unfair competition. *See* Billing World Magazine, May 2001, p. 60 (excerpting Chairman Powell’s Testimony before the House Energy and Commerce Subcommittee on Telecommunications and Internet.) Further, last year, Chairman Powell recommended that Congress increase the forfeiture level imposed on common carriers violating the local competition provisions of the Act from the current statutory limit of \$1.2 million per violation to at least \$10 million per violation. *See* FCC Press Release, May 7, 2001 wherein Chairman Powell also stated that “...the FCC must vigorously enforce the local competition provisions of the 1996 Act”, and “there is more we can do with the help of Congress”.

to comply with the performance metrics is not regarded as a simple cost of doing business.

The impact of the ILEC's poor provisioning of UNEs to the CLECs demonstrates the need for an appropriate remedy plan. The harm to a CLEC's reputation and the scaling back of market rollout due to poor UNE provisioning to CLECs has a significant and lasting effect. Discrimination against a few CLEC orders can result in irreparable harm to the CLEC that cannot be measured solely by the number of CLEC orders placed in a given month. In WorldCom's recent local service launch in Georgia, WorldCom found that many customers that lost dial tone after UNE-P migrations under BellSouth's two order process switched back to BellSouth before WorldCom could even open the trouble ticket. This unnecessary two-order process proved to be an effective win-back program for BellSouth.

Poor provisioning performance by an ILEC has an immediate and long lasting impact. In addition, the CLECs' ability to enter the market is constrained by the reliability and quality of an ILEC's business processes. ILECs have a powerful incentive to protect their near term local monopoly, their growing markets in advanced digital services, and future long distance revenues.

An enforcement plan and associated remedies that is not significant motivates the ILEC to maximize profits and disincentivizes the ILEC from providing quality wholesale products and services. The economics of the matter are clear; remedies must be sufficiently large to render discrimination an unprofitable strategy to an ILEC. A single act of discrimination by an ILEC reduces the perceived service quality of a CLEC, and thus jeopardizes its ability to garner future business.